

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DAVID A. CHRISTOPHER,) CASE NO.: C07-0701-JCC
Petitioner,) (CR03-0136-JCC)
v.)
UNITED STATES OF AMERICA,) ORDER
Respondent.)

)

The Court, having reviewed petitioner's petition for writ of habeas corpus (Dkt. No. 1), respondent's answer thereto (Dkt. No. 9), the Report and Recommendation of Mary Alice Theiler, United States Magistrate Judge (Dkt. No. 21), and the remaining record, does hereby find and Order:

(1) The Court adopts the Report and Recommendation (Dkt. No. 21) with the following addendum: Petitioner’s objection that the Magistrate Judge misunderstood his argument with respect to Count 3 neglects to address the primary defect in that argument: there was no indication that petitioner’s state court convictions were a factor in this case. Accordingly, this claim must fail based on the second prong of the *Strickland* test, which requires a “reasonable probability . . . that, but for counsel’s error, the result of the proceedings would

01 have been different." *Strickland v. Washington*, 466 U.S. 668, 687–94 (1984).

02 (2) Petitioner's habeas petition (Dkt. No. 1), his motion to take judicial notice of
03 legislative facts (Dkt. No. 23), and this action are all DISMISSED, with prejudice;
04 and,

05 (3) The Clerk is directed to send copies of this Order to petitioner, to counsel for
06 respondent, and to Judge Theiler.

07 DATED this 15th day of November, 2007.

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A handwritten signature in black ink, appearing to read "John C. Coughenour", is written over a horizontal line. The signature is fluid and cursive, with a prominent 'J' at the beginning and a vertical stroke extending upwards from the end.

JOHN C. COUGHENOUR
United States District Judge